

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT T. SLAVIN and U.S. POSTAL SERVICE,
POST OFFICE, Irvington, NY

*Docket No. 00-2530; Submitted on the Record;
Issued October 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on January 16, 1997 causally related to his April 3, 1995 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained a recurrence of disability.

On April 5, 1995 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim alleging that on April 3, 1995 he hurt his lower back when he put down a tray of mail and then stood up.

The Office of Workers' Compensation Programs accepted appellant's claim for a lumbosacral sprain and a herniated nucleus pulposus at L5-S1.

On June 17, 1996 appellant returned to limited-duty work at the employing establishment for eight hours a day.¹

On February 14, 1997 appellant filed a claim alleging that he sustained a recurrence of disability on January 16, 1997, when he stopped work due to continuing pain.²

By decision dated June 9, 1997, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on January 16, 1997 causally related to his April 3, 1995 employment injury. On June 10, 1997 appellant requested an oral hearing.

In an October 15, 1998 decision, the hearing representative set aside the Office's decision and remanded the case for further development.

¹ The record reveals that appellant stamped the nixie mail and forwarded mail in his limited-duty position.

² Appellant returned to limited-duty work at the employing establishment on July 26, 1997.

On remand, the Office issued a February 8, 1999 decision finding the medical evidence insufficient to establish that appellant sustained a recurrence of disability on January 16, 1997. Appellant, through his counsel, requested reconsideration of the Office's decision.

By decision dated May 1, 2000, the Office denied appellant's request on the grounds that the evidence was insufficient to warrant modification of its prior decision.

An employee returning to light duty or whose medical evidence shows the ability to perform light duty has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence, and to show that he or she cannot perform the light duty.³ As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.⁴

In this case, appellant has shown no change in the nature and extent of his injury-related condition or of the limited-duty requirements. The record shows that following the April 3, 1995 employment injury, appellant returned to limited-duty work at the employing establishment on June 17, 1996. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of his limited-duty job requirements. Appellant has not submitted sufficient medical evidence establishing that the accepted conditions have materially changed or worsened since his return to work in 1996.

The only evidence that addressed appellant's claimed disability in January 1997 and his April 3, 1995 employment injury consisted of medical reports from Dr. Ezriel E. Kornel, a Board-certified neurosurgeon, and Dr. Ronnie Hertz. Dr. Kornel's June 25, 1997 report found that appellant suffered from residuals of left S1 adhesive postoperative radiculopathy. Dr. Kornel opined that all of appellant's symptoms, including subsequent injury to the nerve and the postoperative adhesive radiculopathy, were related to his original disc herniation. Dr. Kornel's October 9, 1998 report noted a review of the results of a 1995 magnetic resonance imaging (MRI) scan of the lumbar spine, which indicated a small foraminal disc herniation at L3-4. Dr. Kornel stated that this explained appellant's left thigh and knee pain, which persisted following appellant's surgery at L5-S1, and also appeared to be a result of appellant's initial injury.

Dr. Hertz's undated treatment note revealed that, following appellant's back surgery, pain appeared to intensify in his left leg and he continued to have back pain. Dr. Hertz noted that pain in appellant's right leg had now intensified, and opined that this was the result of appellant's original disc herniation and the original injury. Dr. Hertz's January 28, 1999 report noted that appellant suffered a work-related injury and underwent surgery to remove a herniated disc. He further noted that, following appellant's surgery, he continued to experience pain that was radicular in nature. Dr. Hertz stated that an MRI scan showed recurrent disc herniation, which he believed was related to the original injury. He noted that appellant was retreated with surgery

³ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

at the site of the disc herniation and considered this a work-related injury as advised by Dr. Kornel.

Neither Dr. Kornel nor Dr. Hertz addressed the issue of whether appellant sustained a recurrence of his symptoms due to his accepted April 3, 1995 employment injury resulting in disability for limited-duty work January 16 through July 26, 1997. Neither physician opined that appellant was unable to perform the duties of his modified position. As appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability causally related to his accepted employment injury, he has not met his burden of proof.⁵

The May 1, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 23, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997) (the test of "disability" under the Federal Employees' Compensation Act is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured); *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990) (whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence); (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality); *Anna C. Leanza*, 48 ECAB 115, 124 (1996) (the factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion).